IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.1721 OF 2003

Mr.Dattatray Yallappa Kamble,
Indian Inhabitant, residing at
Post Karve, Taluka Chandgad,
District Kolhapur--416 507. : Petitioner

V/s.

1. The State of Maharashtra
   through the Secretary, Rural
   Development & Irrigation Department,
   Government of Maharashtra,
   Mantralaya, Mumbai--400 032.
2. Addl. Commissioner,
   Pune Division, Commissioner's
   Office, Vidhan Bhavan Extension,
   Pune.
3. Chief Officer,
   Zilla Parishad, Kolhapur. : Respondents

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Mr.R.V.Pai with Ms Bina R. Pai for the petitioner.

Mr.R.D.Rane, Addl. Govt. Pleader, for the respondents.

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CORAM : S.RADHAKRISHNAN &
S.A.BOBDE, JJ.

October 6, 2004.

ORAL JUDGEMENT (Per Radhakrishnan,J.)

1. By this petition, the petitioner is challenging two orders both dated 27.3.2000, by the first order, the suspension period was treated as an order of punishment of suspension and by the second order, the petitioner has been awarded the penalty of punishment of withholding of two increments.

2. The facts are that the petitioner had joined as a teacher in Kolhapur Zilla Parishad, taluka Chandgad, dist. Kolhapur, in the year 1972, putting in 27 years of service. The petitioner has been working as Acting Principal of a School at Kadalge (B), taluka Chandgad, dist. Kolhapur. It appears that one Dayanand Patil had written a note to a student, Asmita, calling her to a secluded place. The petitioner contends that the said note was carried by one Tukharam who was studying in Standard V and gave it to the girl Asmita, who was a student of Standard III. This incident took place on 8.3.1999 at night. On the very next day, it appears that the said girl Asmita complained of the same to the petitioner mentioning the above fact of note being given to her asking her to go to a secluded place. Immediately on the very same day i.e. on 9.3.1999 the petitioner appears to have called both Tukharam and Dayanand to his

office and had punished both the students by using a stick and beat their buttocks by way of disciplining them. Thereafter, on 11.3.1999, the Circle Education Officer appears to have visited the said school and on the very same day, he seems to have recorded the statement of the said girl student Asmita. Immediately on 20.3.1999 the Block Education Officer issued the order of suspension of the petitioner, pending an inquiry. On 5.5.1999 a show cause notice was issued to the petitioner along with a charge-sheet wherein the petitioner was charged for assaulting Dayanand, the Standard III student, thereby committing a breach under rule 3 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967. The said rule 3 reads as under:-

> **"3. Duty of Parishad servant to maintain integrity**.-
> Every Parishad servant shall at all time maintain absolute integrity and devotion to duty."

Thereafter, an inquiry appears to have been conducted by recording the statements of witnesses by the Block Development Officer and, ultimately, the Chief Executive Officer based on the above material had passed both the orders dated 27.3.2000. By the first order, the very

period the petitioner was under suspension was treated as punishment of suspension and by the second order, the petitioner was inflicted with the punishment of withholding of two increments. Aggrieved thereby, the petitioner had preferred an appeal before the appellate authority. The appellate authority being the Additional Commissioner, Pune Division, refused to entertain the appeal and confirmed the order passed by the Chief Executive Officer. Thereafter, the petitioner had preferred a revision application before the State of Maharashtra which revision also came to be dismissed.

3. Mr.Pai, learned counsel appearing for the petitioner, contended that the above rule 3 of the Maharashtra Zilla Parishads District Services (Conduct) Rules, 1967, would in no way be attracted in the facts and circumstances of this case. The said rule has no application whatsoever. He contended that the petitioner has not been charged with any violation of integrity and and even with regard to the above conduct, it can never be questioned that the petitioner violated "devotion to duty".

4. Mr.Pai thereafter very strenuously contended that in the second order passed by the Chief Executive Officer, there is no finding given on what basis the petitioner was guilty. On the contrary, in the said order dated

27.3.2000, it is observed as under:-

> "For the offence of giving false information, assaulting students with stick (chadi) and in this connection to bring political pressure on administration, punishment of stopping two increments of Shri Kamble having no effect on further increment was proposed and accordingly he was served with the Final Show Cause Notice on 24.12.99 by this office, on the condition that he will submit the reply within 21 days. He has received the said notice on 29.12.99. Accordingly Shri Kamble has submitted reply (explanation) on 28.1.2000. On the perusal of the said reply as it was observed to be not-satisfactory, I, Chief Executive Officer, Zilla Parishad, Kolhapur do pass an order as detailed hereunder in accordance with the hearing which was held on 14.9.1999."

Shri Pai, therefore, contended that the show cause notice and the charge contemplated violation of rule 3 with regard to the assault on Dayanand whereas the order

imposing punishment of withholding of two increments has been passed on three grounds: (i) for giving false information; (ii) assaulting students with stick; and (iii) bringing political pressure on administration. Therefore, Mr.Pai contended that this order can never be sustained in law inasmuch as the petitioner is not even charged with the offence of giving false information or bringing political pressure on administration whereas he is being punished on these grounds also. Under these circumstances, Mr.Pai contended that **ex facie** the above orders are wrong and cannot be sustained in law and, accordingly, should be quashed and set aside.

5. Mr.Rane, learned Addl. Government Pleader, for the respondents very strenuously tried to support the order by contending that the inflicting of two blows with sticks on Dayanand, who was a Standard III student, was an excessive action on the part of the petitioner which was not proper on the part of the petitioner who was the Acting Principal of the School. Mr.Rane, however, could not dispute that the said rule 3 may not squarely fall with regard to the charge with which the petitioner has been charged. He also contended that the order dated 27.3.2000 imposing the punishment of withholding of two increments has also taken into account the offence of giving false information as well as bringing political pressure on administration.

However, Mr.Rane contended that having regard to the facts and circumstances and the petitioner being the Acting Principal, ought not to have used such an excessive use of force and given two blows on the back of a Standard III student. In the circumstances, the punishment was justified.

6. We have not been furnished with a copy of the inquiry report and also we find that rule 3 only contemplates devotion to duty whereas the petitioner was not charged with any lack of devotion to duty. The act with which the petitioner was charged can by no stretch of imagination be treated as devotion to duty. In any event, the very impugned order by which the petitioner was penalised with the order dated 27.3.2000 takes into account the offence of giving false information and also bringing political pressure on administration with which the petitioner was not even charged.

7. Under the aforesaid facts and circumstances, both the said orders cannot be sustained at all in law and hence, the rule is made absolute in terms of prayer clause (a). Needless to say that in view of the quashing of both the orders, the petitioner will be entitled to all the benefits as if the aforesaid orders are not passed at all.

Sd/-

(S. RADHAKRISHNAN, J.)

Sd/-

(S.A. BOBDE, J.)